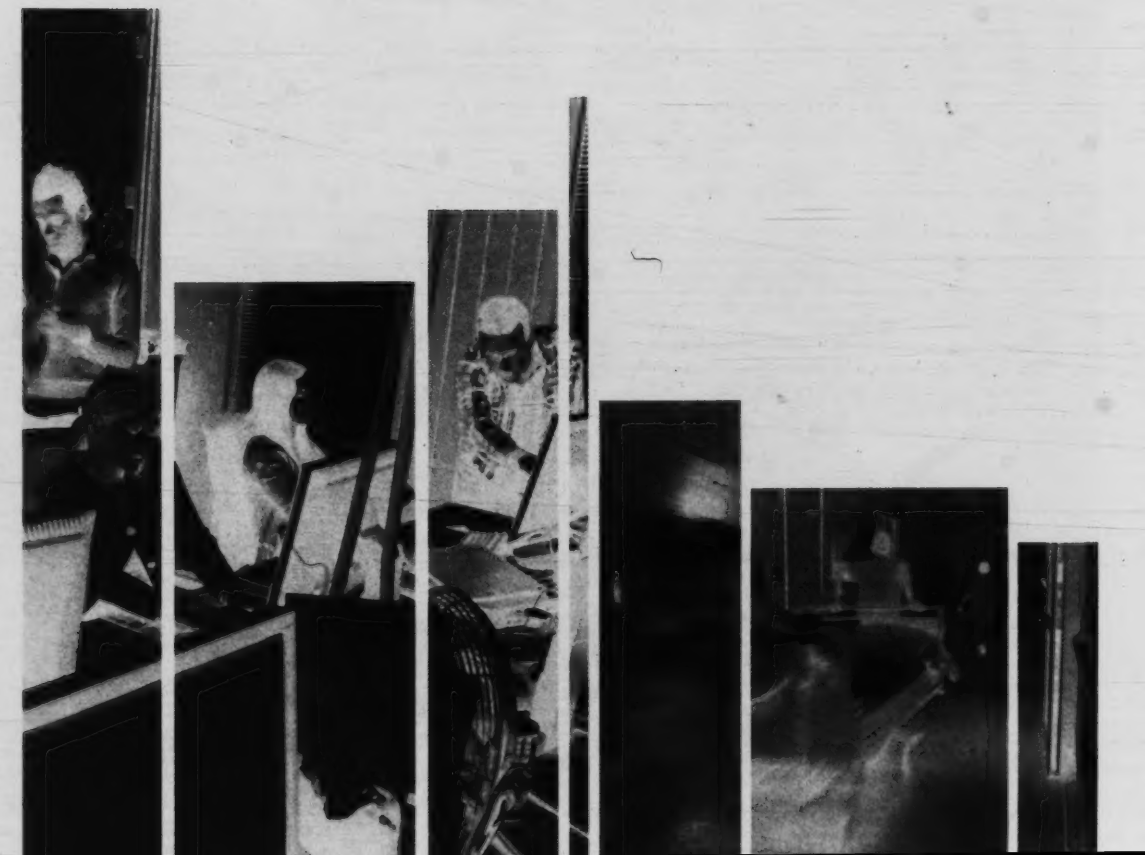
REPORT of the FAIR PRACTICES ADVOCATE 2008

An independent office working to ensure fair practices at the Workers Compensation Board of Manitoba



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Greetings from the Fair Practices Advocate

It is a pleasure to present my Annual Report for the year ending December 31, 2008.

As has been the case since the Fair Practices Office opened in 1989, staff in the Office assist injured workers, their dependents, and employers by working to resolve the wide variety of issues they bring to the office.

In responding to these issues, the Workers Compensation Board has made significant efforts to ensure that their staff have the technical tools and training to ensure fairness. The WCB's demonstrated commitment to resolve issues of fairness is a great strength as the organization moves forward in its continued efforts to improve service. For the fourth year in succession, there has been a decrease in the total number of complaints received by the Office.

My staff and I look forward to another year of working with the WCB to improve service for injured workers, their dependents, and employers.

Pat Macgillivray
Fair Practices Advocate

Overview

The Fair Practices Office is an independent office within the workers' compensation system in Manitoba. The Office acts as ombudsman for injured workers, their dependents, and employers in Manitoba. The goal of the Office is to help injured workers, their dependents, and employers resolve issues they may have with the Workers Compensation Board (WCB) and, in doing so, help the WCB to improve its quality of service.

The Fair Practices Office was established by the WCB in 1989. Currently, the Office has a staff of three: the Fair Practices Advocate, and two Intake and Investigative Assistants.

In 2006, the Fair Practices Advocate's role within the WCB became law, following a change in *The Workers Compensation Act*. The revised Act makes it mandatory for the WCB to have a Fair Practices Advocate.

The Fair Practices Office has three main purposes:

- to listen to the concerns raised by injured workers, their dependents, and employers
- to pursue the resolution of issues brought forward
- to identify reoccurring issues regarding fair practice and report them to the WCB

Three main principles guide the work of the Fair Practices Office:

- **Impartiality** - The Fair Practices Office reviews all issues impartially and makes recommendations that promote fair practice.

- **Confidentiality** - All inquires received by the Fair Practices Office are confidential, unless intervention is requested.

- **Independence** - The Fair Practices Office serves injured workers, employers, and the WCB, but works independently in the interest of fairness.

The Fair Practices Office Resolution Process

When Fair Practices Office staff receive complaints or enquiries, they respond according to what is appropriate to the circumstances of each individual issue. Typically, they use the following process to seek resolution of issues:

1. If a caller bringing an issue forward hasn't already done so, the caller is encouraged, where appropriate, to address the issue with the WCB staff person most directly responsible.

2. If the issue is left with the Fair Practices Office, it is assessed to determine if there is a fairness issue to be addressed. Depending on the issue, the Office may consider the following questions to make this determination:

    - Is there an issue of timeliness that can be addressed?
    - Is there a communication issue that needs to be resolved?
    - Does the caller require more information to understand WCB processes and policies?
    - Was the claim investigated adequately?
    - Did the caller have an opportunity to make a case to the decision maker?
    - Is there a reasonable and logical connection between the facts of the case and the decision reached?
    - Was the rationale for the decision clearly explained?
    - Is the decision consistent with WCB legislation and policy?
    - If a mistake was made, was it acknowledged and, when possible, corrected?
    - Did the WCB respond fairly and respectfully if a caller felt poorly treated?

3. If the Office determines that there is not a fairness issue involved, this is explained to the caller.

4. If there appears to be a fairness issue that requires further investigation or action, the Office contacts WCB management staff to discuss steps to resolve the issue. If the issue remains unaddressed, the Office approaches senior management to discuss options for resolution.

5. The caller is contacted by the Office with the results.

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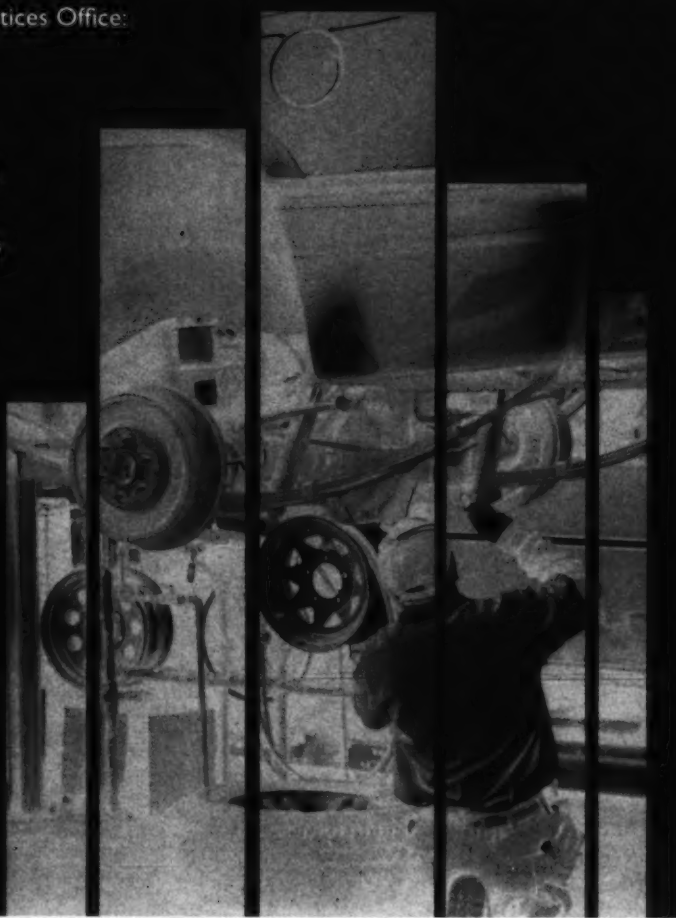

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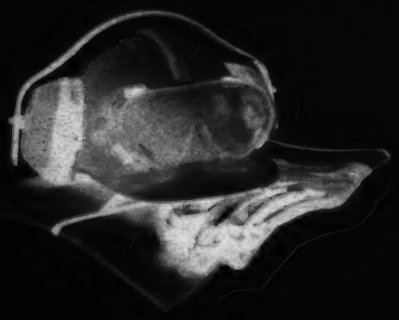
Issues Heard by the Fair Practices Office



The Fair Practices Office hears from injured workers and employers on a wide variety of issues. The issues tend to fall into five general categories:

Information - Callers have questions about WCB legislation, policies and procedures, or status of claims.

- *"How can I appeal a decision made by the Appeal Commission?"*
- *"How are claims adjudicated?"*
- *"Has the WCB received my Doctor's report?"*

Communication/Service - Callers are unsatisfied with the way WCB staff served them or communicated with them.

- *"I couldn't understand her explanation."*
- *"My phone calls have not been returned."*
- *"He was rude to me."*

Disagreements with Decisions - Callers disagree with decisions on claims or benefits.

- *"They said I was ready to go back to work but I am still in a lot of pain."*

Process Delays - Callers complain about delays in benefit payments, medical expense refunds, or medical authorizations.

- *"My last benefit payment was a week late."*
- *"Why are my prescription costs not covered?"*
- *"They still haven't authorized my treatments."*

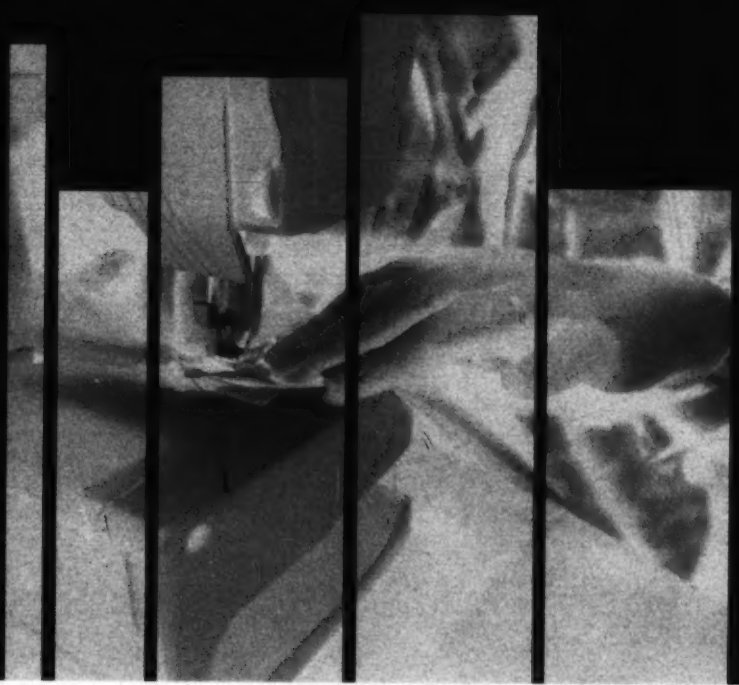
Unadjudicated Claims - Injured workers are waiting on a claim decision and don't have income.

- *"I can't afford to wait much longer for a decision."*

As shown in the table below, the overall number of issues brought to the Fair Practices Office has decreased significantly over the past four years. This is a very positive trend; it suggests that WCB staff are providing better service and managing claims more effectively.

Number of Issues Brought to the Fair Practices Office by Category 2004 - 2008

	2004	2005	2006	2007	2008
Information	306	242	202	194	155
Communication/Service	214	197	114	121	125
Disagreement with Decisions	223	152	144	105	109
Process Delays	104	62	49	43	39
Unadjudicated Claims	58	26	31	19	20
Total	**905**	**679**	**540**	**482**	**448**



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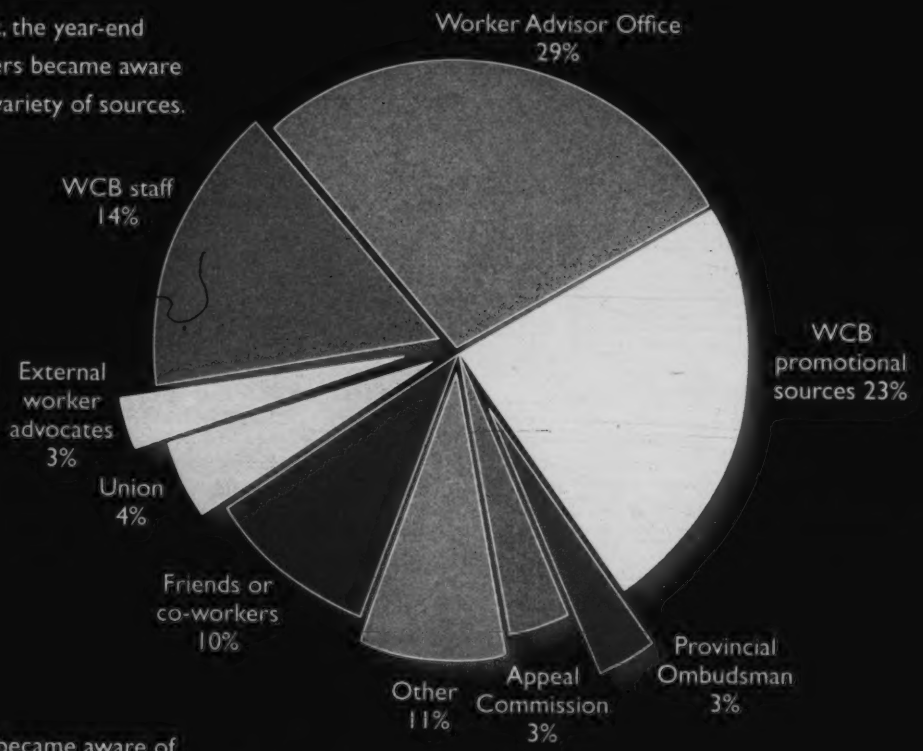
Awareness of the Fair Practices Office

Throughout 2008, the Fair Practices Office asked callers how they became aware of the Office.

As indicated in the chart, the year-end results indicate that callers became aware of the Office through a variety of sources.



About half of the callers became aware of the Office either through the Worker Advisor Office or WCB promotional sources such as brochures, the WCB website, or a phone listing. WCB staff, friends and co-workers were other common sources.

The remaining sources (under the "Other" category in the chart) include:

- the office of the Minister of Labour and Immigration
- lawyers
- other insurers
- employers and their advocates
- health care providers such as physicians, chiropractors, and physiotherapists

The Fair Practices Office continues to monitor the source of referrals. The information will be used to develop strategies that will build awareness of the Office's services among as many employers and injured workers as possible.

Differences in Mandates

The Fair Practices Office Compared to the Review Office and Appeal Commission

The Fair Practices Office and Appeal mandates complement rather than duplicate one another. This is reflected in two differences in their respective mandates:

- **Range of Issues** - Many of the issues brought to the Fair Practices Office lie outside of the Appeal mandate, such as the timeliness of adjudication and processing of benefits, courtesy and communication issues, and the need for apology when things have gone wrong.

- **Authority to Make Recommendations vs. Changing Decisions** - The mandate of the Review Office and the Appeal Commission gives each office the authority to change a decision if they believe the weight of the evidence, on a balance of probabilities, fails to support the decision. The Fair Practices Office mandate is narrower, restricted to making recommendations for change. Recommendations are made if the decision or actions of the WCB are determined to be clearly wrong or clearly unreasonable. This is a more stringent test than would be applied to the same issues through the Review Office or Appeal Commission processes.

Case Summaries

Examples of Issues Brought to the Fair Practices Office in 2008

The following cases are a sample of the broad range of issues where there was intervention by the Fair Practices Office.

Case 1 – Leaving Information

An injured worker called the Fair Practices Office and said that he arrived home one day to find that his case manager had discussed his claim with a family member. The injured worker took issue with this because he didn't want the family member to know about the details of his injury or claim.

Upon investigation, the Fair Practices Office confirmed that the case manager gave information to a family member who answered the phone while the worker was away. The case manager did this because she was having difficulty contacting the worker, who had returned to work as a driver and was often not at home.

The Fair Practices Office discussed the issue with a senior manager. The manager acknowledged that confidentiality is required under WCB policy, no matter how difficult it is to contact an injured worker. Only the injured worker is entitled to information unless previous written authorization has been provided.

The senior manager met with staff to reinforce three items of policy and practice related to this case:

- Confidential information cannot be shared without an authorization, even with people who live with the injured worker.
- Difficulties in contacting injured workers do not change the requirements or expectations of confidentiality.
- Staff should endeavor to obtain authorizations in advance from workers willing to provide them.

Case 2 – Late Penalty

A financial consultant representing an employer that was being assessed a penalty for late reporting of their payroll information called the WCB to complain that the penalty was not justified. She was told to pay the penalty and then appeal the decision. She then contacted the Fair Practices Office to complain that the penalty was unfair and that she should not have to pay the fine before having the circumstances investigated.

The consultant explained that she worked on behalf of a number of employers and submitted payroll information by fax for all of them at the same time. She claimed that the WCB received the information on time for the other employers. Under normal circumstances, the WCB creates the employer's statement of account immediately upon receipt of the payroll information. Although the statement of account was not generated by the WCB in this case, the consultant had taken the initiative to calculate the premium and submit it by the due date.

The consultant was not able to provide absolute proof of sending the fax on time, but the facts of the case made the consultant's version of events both plausible and likely. The Fair Practices Office discussed the issue with the Employer Services Department and suggested that the matter warranted investigation and possible remedy. The Employer Services Department investigated, concluded that the facts that were available supported the consultant's version, and reversed the penalty.

Case 3 – Re-employment

A worker who had recovered from an injury contacted the Fair Practices Office to express his disappointment at not being re-hired by his employer because of a work shortage. The injured worker disagreed that there was a shortage. The injured worker also stated that he was told by his case manager that he should look for work elsewhere and appeal the outcome.

Through conversation with the injured worker, the Fair Practices Office determined that his employer was more than likely required to re-employ him, and that there was likely not a shortage of work.

Under WCB legislation, some employers are obligated to re-employ qualifying workers who recover their health after being injured in a compensable accident. Workers should be returned to their original position or one that is comparable in tasks and earnings, unless doing so would cause undue hardship to the employer. Employers who refuse their obligation to re-employ workers are subject to a fine.

The WCB is obliged to assist in finding resolution to such disputes, but the Fair Practices Office investigation found that the WCB's actions were limited to asking the employer if the worker was going to be re-employed. The Office contacted the appropriate senior manager and informed her that the WCB should investigate further to determine if the employer and the WCB had met their obligations in this case.

Further investigation confirmed that the worker was in fact entitled to re-employment. The case manager met with the employer and subsequently the worker was offered a position.

Case 4 – Language Barrier

A union advocate called the Fair Practices Office with issues relating to a complex case in which an injured worker was denied benefits. Among the concerns raised was the worker's limited ability to speak and understand English.

A file review clearly determined that WCB staff were aware of the language difficulties. To deal with these difficulties, WCB staff relied on the employer to relay important information between the worker and the WCB. Based on the file review and the information brought forward by the union, it was clear that the injured worker and employer disagreed about what had been communicated.

The Fair Practices Office concluded that it was inappropriate to use the employer as an interpreter, because it was unfair to both the employer and the injured worker. The Office also concluded that the only reasonable solution was to re-adjudicate the claim, using the services of a qualified, independent interpreter who could accurately communicate the injured worker's explanation of events. The WCB agreed with the findings and proceeded to re-adjudicate the claim with a qualified, independent interpreter.

The WCB also committed to increasing staff access to interpretation services, and to enhancing training for staff to recognize and act on the need for interpretation services.

Reoccurring Issues

As described earlier in this report, one of the three main purposes of the Fair Practices Office is to identify and report on reoccurring issues relating to fair practice. The Office identifies the issues through an ongoing review and analysis of the enquiries it receives. Four of these issues are presented in this year's report:

- Communications with Treating Physicians
- Occupational Disease Claims
- Access to Community Medical Care
- Adequacy of Investigations

Communications with Treating Physicians

There are cases where an injured worker's treating physician gives an opinion that differs from the opinion of an internal WCB physician. It is a WCB practice in these instances that the internal WCB physician will contact the worker's physician. It is assumed that there is benefit in the two physicians sharing information, discussing their opinions, and, if possible, reaching consensus.

Examples observed by the Fair Practices Office suggest that the practice is having promising results. When the physicians reach consensus, it is less troublesome for the injured worker. Even when they do not, the opportunity for dialogue can have a positive effect on the future management of the claim.

This practice is not yet being conducted on a consistent basis. However, when the Fair Practices Office does encounter instances where a dialogue between physicians should but does not take place, the case is brought to the attention of WCB administration and, in each case, contact is initiated.

Occupational Disease Claims

Determining causation in the adjudication of occupational disease claims can be complex. As a result, the Fair Practices Office received complaints this past year on the quality of the adjudication of stress-related disability, hearing loss, and environmental factors leading to allergic reaction.

The WCB administration has acknowledged the need to enhance the adjudication of occupational disease claims by increasing staff, training, and technical resources in 2009.

Access to Community Medical Care

A number of injured workers informed the Fair Practices Office that they had difficulty finding a physician to treat them. The problem seems particularly difficult for injured workers that have had a long relationship with the WCB. Some of the callers to the Office said that physicians refused to treat them once the physicians found out that they were WCB claimants.

The Office raised the issue with the WCB's Healthcare Department. The Director agreed that the physicians' refusals were inappropriate and he raised the issue with the College of Physicians and Surgeons. In response, the College issued a Statement, which, according to the College, is "a formal position of the College with which members shall comply." The Statement says that while a physician retains the right to refuse a patient for legitimate reasons, it is unethical to discharge or refuse a patient on the grounds that the patient has a claim with either the WCB or another insurance provider.

Adequacy of Investigations

A fundamental principle of the workers compensation system is its use of an enquiry model. This model places responsibility on the WCB to seek all relevant information and include it in its decision-making process. For this reason, it is very important that the WCB ensures a full and comprehensive investigation in each case.

When a caller contacts the Fair Practices Office to communicate disagreement with a decision, it is not uncommon for the Office to find that the investigation was not complete. Typically, this conclusion is reached after a decision has already been made. During 2008, 26% of calls to the Office about a disagreement with a decision resulted in a recommendation from the Office that further investigation take place. The WCB conducted further investigation on every occasion that the Office made this recommendation.

To Contact the
FAIR PRACTICES OFFICE

Phone:

954-4467 (Winnipeg)

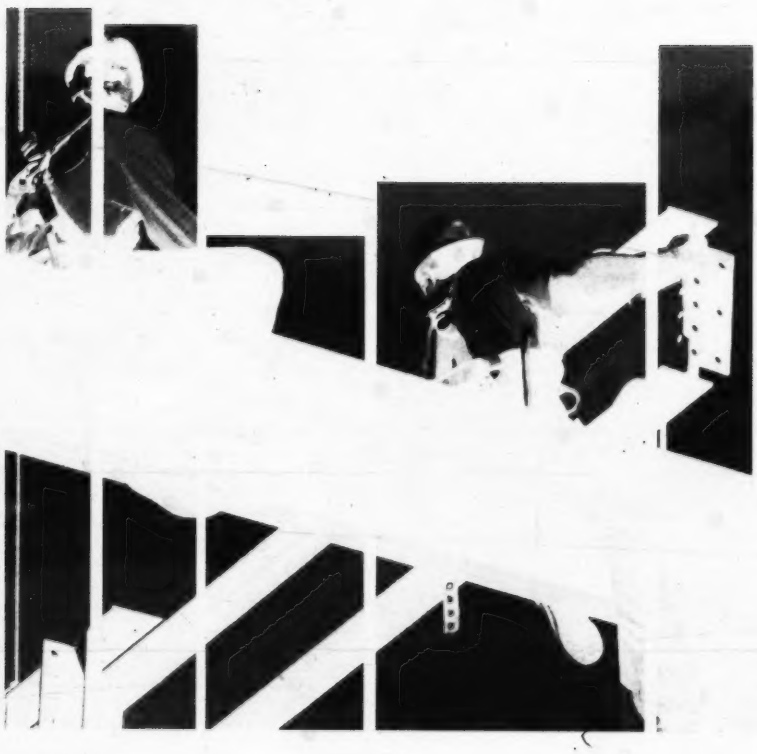
1-800-362-3340 (Toll Free)

Or Write:

Fair Practices Office
333 Broadway
Winnipeg MB R3C 4W3

Or Email:

fpo@wcb.mb.ca



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